

## GENERAL SERVICES DIVISION

# UPDATE UPDATE

*The quarterly newsletter of the General Services Division*

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### PROCUREMENT NEWS AND NOTES

**Legislative Update.** As the newsletter goes to print, the 2005 Legislature is heading into its final days. The effects of the legislative session on public procurement issues will be discussed in detail at the upcoming Purchasing Users Group (PUG) meeting on April 14, 2005. The highlight of the session included the passage of HB 67, which made several changes to the Montana Procurement Act. A synopsis of all legislation will be distributed at the PUG meeting and included with the next issue of the newsletter.

**Central Stores Update.** The Central Stores program will not be privatized and will be operating as usual. The Stores program will continue to supply janitorial products and fine and coarse paper, in addition to office supplies. We plan to add an online ordering system shortly.

**Farewell to Tom Gustin.** Whoever thought the day would come when Tom Gustin would retire after almost 29 years of serving the State of Montana? Is there anyone in state government that hasn't seen him darting around the Capitol Complex or for that matter, on the backroads of Montana, passionately doing whatever job he had for the State at that moment? From a Grade 4 mail clerk in Central Mail in 1976 to the program manager of three major state programs in 2005, Tom has tirelessly devoted himself to providing outstanding service to the people of Montana. To anyone who knows Tom, it is no surprise that he is not retiring at all, but instead has been snatched up by a private company and will soon be jetting around the country promoting a new cause. It is hard to imagine the Department of Administration running a day without him. However, his able fellow co-worker, Devin Garrity will be assuming all of Tom's responsibilities

for managing the State's energy procurement, the fueling card program and the purchasing card program. Devin, who just returned in January after two years of active military duty, can be reached at Tom's same number — 444-3312.

**Change in Administrative Rules.** Numerous administrative rule changes are being proposed that will impact the administration of the Montana Procurement Act. The proposed rules will be discussed at length at the upcoming April 14<sup>th</sup> Purchasing User Group meeting. Once a final draft of the rules is complete, the proposed rule document will be posted at <http://mt.gov/doa/gsd/procurement/procurementlawrulespolicies.asp>.

**RFP Templates and Contract to be Modified.** The State Procurement Bureau has begun the process of modifying the RFP templates and standard contract. Substantive changes will be made to the template to clarify when and if a proposal can be disqualified based on receiving a "fail" for any evaluation criteria. The contract will be changed to include an optional section entitled Contract Performance Assurance, which will include a provision for milestone payments and payment holdbacks in addition to the existing contract performance security language. As always, once changes to the RFP templates are completed, notice will be sent to the Purchasing list serve and the documents will be reposted to the GSD website.

**Year-End is Getting Close!** Agencies are reminded that all FY05 requisitions for projects requiring a request for proposal process should have been received by April 1, 2005. Projects or purchases solicited through an invitation for bid must be received at the State Procurement Bureau by May 1, 2005.

## PROCUREMENT TRAINING

Penny Moon, SPB Senior Contracts Officer, will be offering the following classes over the next several months. Contact the Professional Development Center at 444-3985 or e-mail [pdc01@mt.gov](mailto:pdc01@mt.gov) for registration and cost information.

**Initiating and Navigating the RFP Process**  
– April 21, 2005. This seminar is intended for anyone with actual or potential responsibility for developing, soliciting, and evaluating Request for Proposals (RFP). It will identify when to use the RFP process, how to establish proposal requirements, criteria, evaluation committees, proposal conferences, negotiations, and proposal awards and monitoring.

**Basic Purchasing – Thursday, October 6, 2005.** This class covers procurement ethics, resources, levels of authority and delegation. It also covers the procurement tools used for small purchases, limited solicitation, sole source and sole brand, and term contracts.

**Advanced Purchasing – Thursday, November 3, 2005.** This class covers building, writing, opening and awarding Requests for Proposals, Invitations for Bids, and Requests for Information. It focuses on advanced procurement issues such as leasing versus buying, public access, protests, grants, and ethics.

**Initiating and Navigating the RFP Process**  
– Thursday, November 17, 2005. (See description above.)

## THINK ABOUT IT

*People forget how fast you did a job—but they remember how well you did it.*

**Howard Newton**

## ON THE LEGAL FRONT

Six procurement cases continue to wind their way through the legal process and are being monitored for their potential impact on public procurement in Montana. The Reier Broadcasting Company (RBC) v. MSU case over the award of a contract for broadcast rights in 2002, has now been appealed to the Montana Supreme Court by RBC. This case revolves around MSU's decision to find the company non-responsive in their response to a Request for Proposal for broadcasting rights. This case is significant in that it challenges the State's option to determine "responsiveness" at any time prior to award. In addition, this case is significant in that it is the first case under section 18-4-242, MCA, of the Montana Procurement Act to be appealed for judicial review after the contested case hearing stage.

A second case involving RBC is an action filed directly in District Court concerning a related action against MSU concerning a broadcasting rights contract. RBC has appealed to the Montana Supreme Court a District Court's decision to not allow RBC to amend their complaint to include a challenge of the constitutionality of section 18-4-242, MCA, concerning the awarding of damages to losing bidders.

The third procurement case still underway is the Spiker Communications case against the State. This case originated in 1995 and has still not gone to trial. It involves allegations of the disclosure of the contents of an RFP to a competing vendor. This case serves as a reminder to procurement officials of how long legal issues can be drawn out and the costs that can be incurred in defending our decisions.

A fourth case procurement case involves a liquor store in Red Lodge and is set for a two-day contested case hearing at the end of April 2005. In this instance, the main issue is whether a contract can legally come into existence through actions of the parties other than by both parties signing the contract.

A fifth case that is proceeding to a contested case hearing involves a debt collection company and the Department of Labor and Industry. The company,

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which was the previous contract holder, is alleging that the State incorrectly evaluated the proposals for debt collection service. Discovery actions are underway.

A final pending case is one involving the Department of Administration's decision to debar a company for failing to honor its bid for the fifth time in recent years. Under ARM 2.5.402, a vendor has a right to request a contested case hearing when the department provides notice to them of its intent to debar them from conducting further business with the State for a particular period of time.

### PRINT AND MAIL SERVICES NEWS AND NOTES

**Mail Preparation Supplies.** Mail Services has the supplies you may need for preparing your mail. The U.S. Postal Services (USPS) has introduced two postage rate package options that can save you money, if you use the packaging provided by USPS.

Ship your documents or packages in an average of two to three days with Priority Mail® Flat Rate Envelopes and Boxes. For one low rate, ship as much as can be properly secured in a flat rate envelope or box (up to a maximum of 70 lbs.) to any U.S. destination.



Priority Envelope



Priority Boxes

- The Priority Mail Flat Rate Envelope is \$4.35 for any U.S. destination and any weight up to a 70 lb. maximum.
- The dimensions of the envelope are 12 1/2" X 9 1/2".
- The contents of the flat rate envelope must be confined within the envelope, using the flap adhesive as the primary means of closure.

- The flap must close easily, adhere to the envelope and be secured with tape if desired.
- The design and shape of the envelope may not be altered or enlarged in any way to fit the contents.
- The Priority Mail Flat Rate Box is \$8.20 for any U.S. destination and any weight up to a 70 lb. maximum. This rate also applies to APO addresses.
- The inside dimensions for the two boxes available are 11" x 8.5" x 5.5" and 13.625" x 11.875" x 3.375".
- The contents of the flat rate box must be neatly contained inside of the box with adhesive packaging tape.
- The box must close securely and retain its shape when taped with adhesive.
- The shape of the box may not be changed or enlarged to fit its contents.

If you would like a supply of these envelopes or boxes or any other USPS standard forms or supplies, please call Dennis McAlpin at 444-4190.

### PURCHASING CARD PROGRAM

**New Contract Signed.** U.S. Bank was awarded the State's Purchasing Card Program contract as the result of a lengthy RFP process, which began in August of 2004 and ended with the contract being fully executed in March 2005. The contract is posted on the GSD website at the following link:  
<http://mt.gov/doa/gsd/procurement/termcontracts.asp>.

An initial transition meeting took place on March 30, 2005, with full implementation not expected until later this year. New cards should be issued sometime in July 2005. Until further notice, agencies should continue to use the old purchasing cards. Please direct any questions concerning the program to Devin Garrity at 444-3312 or dgarrity@mt.gov.

## QUESTION OF THE QUARTER

*"A company representative recently told me that they did not want to do business with the State of Montana because of the State's strong "right-to-know" laws that would make it possible for his competitors to see and copy his entire proposal. What should I tell him?"*

First, encourage him to continue to do business with us. Our State's strong "right-to-know" provisions are based on provisions in our State's Constitution that grant all persons "the right to examine documents and observe the deliberations of all public bodies or agencies of state government."

However, there are three limitations to this public right-to-know provision that permit bona fide trade secrets, matters involving individual safety, and other constitutional protections to be shielded from public view. Businesses wishing to protect bona fide trade secrets may submit an affidavit with their proposal, which the State will review and honor, if the statutory definition of a bona fide trade secret is met. The State's Trade Secret Confidentiality Affidavit is available at the following website address:  
<http://www.mt.gov/doa/gsd/procurement/forms.asp>.

Keep in mind that these requirements are equally applied to all businesses and individuals seeking to do business with the State of Montana.

The State of Montana is eager for his business, so don't let him be deterred!

## PROPERTY AND SUPPLY NEWS AND NOTES

**Spring Auction.** The State's Spring Auction is scheduled for Saturday, May 21, 2005, in Helena. All vehicles and items must be at the Property and Supply Bureau yard no later than Friday, April 15, to meet the auction deadlines. Titles must be turned in with the vehicles or a \$15 fee will be charged to request a duplicate. Call Mark Athearn at 444-6016 or Gary Henry at 495-6017 for further details.

## TERM CONTRACT UPDATES

**Term Contract #460-B Extended.** The State Procurement Bureau and the Information Technology Services Division have agreed to extend State term contract #460-B for Laser Printers for one additional year. This is an exclusive contract with Corporate Technology Group for Hewlett Packard and Lexmark black and white printers, and for Tektronix color printers. The renewed contract period is from May 1, 2005, through April 30, 2006.

**Environmental Services and Montana Wetlands Legacy Projects.** The State Procurement Bureau has entered into multi-vendor term contracts for the environmental services and Montana Wetlands Legacy projects. The environmental services contract offers many different service categories, including but not limited to: water quality monitoring, TMDL, statistical analysis, analytical laboratory services, heavy equipment operators, revegetation services, watershed coordination, and land use planning. Both term contracts offer several contractors for each service area. Please visit the GSD website at <http://www.mt.gov/doa/gsd/procurement/termcontracts.asp> to obtain more information and to access the individual contracts for details regarding each contractor's qualifications and price lists. Questions can be directed to Penny Moon at 444-3313.

## PURCHASING USERS GROUP

The fall meeting of the Purchasing Users Group will be Thursday, September 22, 2005, from 1 p.m. to 4 p.m. in the Public Health and Human Services Auditorium, 111 North Sanders in Helena.

## ABOUT THIS NEWSLETTER

"GSD Update" is published quarterly by the General Services Division of the Montana Department of Administration. For more information, or to get on the mailing list, contact us at (406) 444-2575. Our address is:

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